

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2834 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOK INDUSTRIES

Versus

GUJARAT INDUSTRIAL CO-OPERATIVE BANK LTD

Appearance:

MR CC KAMDAR for Petitioner

MR SV RAJU for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/10/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The Bank, respondent herein, advanced loan against the hypothecation of the goods to the petitioner. For the recovery of the said amount, the respondent Bank filed an Arbitration suit no.673 of 1975 and the suit has been decreed by the Board of Nominees on 30th September, 1977. In pursuance of the aforesaid judgment of the arbitration suit, the raw material and other brass metals of the

petitioner were sold. The petitioner filed an Arbitration suit no.66 of 1979 for the recovery of Rs.281373/- for the loss and damages caused by the Bank and its officers. In the suit, the respondent Bank has taken the objection that the Board of Nominees has no jurisdiction to try the suit. The issues have been framed and the issue regarding the jurisdiction of the Board of Nominees to try the suit, was tried as a preliminary issue. The Board of Nominees decided that the dispute raised by the petitioner falls under sec.96 of the Gujarat Cooperative Societies Act, and as such, the Board of Nominees has jurisdiction to try the suit filed by the petitioner. Aggrieved of the said decision on the preliminary issue of the Board of Nominees, the respondent Bank preferred a Revision application no.41/83 before the Gujarat State Cooperative Tribunal. The petitioner has filed the written statement and also written arguments in the Revision application. The revision application was allowed by the Tribunal on 6th August, 1984 and the finding of the Board of Nominees on the preliminary issue regarding the jurisdiction has been reversed. The judgment has been given by the Tribunal ex-parte and as such, the petitioner moved an application for recalling of the said order. The application filed by the petitioner has been treated by the Tribunal as a review application. It appears that, that application was allowed to be withdrawn as there were some defects therein. A fresh application has been filed by the petitioner and it has been dismissed on the ground of limitation. Hence this Special Civil Application before this Court.

2. The learned counsel for the respondent does not dispute that the notice of the hearing of the revision application of 31st July, 1984 was sent to the petitioner by the Tribunal and it was received in the afternoon on the day fixed for hearing. It is also not in dispute that the notice has been sent by post.

3. One of the submission made by the learned counsel for the petitioner is that as the notice was received in afternoon on the date of hearing of the revision application at Rajkot, the advocate for the petitioner could not attend the court, and as such, the decision given by the Tribunal is against the principles of natural justice. In view of the admitted position, I am of the opinion that the Tribunal has passed the order in violation of the principles of natural justice. The notice has been sent for the date of hearing of the revision application which has been received in afternoon on the date of hearing at Rajkot whereas the venue of the

Tribunal is at Ahmedabad, it would not have been possible for the petitioner to reach at Ahmedabad in time and to appear before the Tribunal. In view of this fact, no other contentions raised by both the learned counsel for the parties need to be gone into.

4. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Gujarat State Cooperative Tribunal at Ahmedabad dated 6th August, 1984 in Revision Application No.41 of 1983 is set aside. In view of the setting aside of the order dated 6th August, 1984, the order of the Tribunal dismissing the application of the petitioner for the review of the aforesaid order is of no consequence.

5. The matter is old one and I consider it appropriate to direct both the parties to present themselves before the Tribunal on 9th December, 1996. This course is adopted as otherwise after receipt of the writ of this order, the Tribunal shall fix the date of hearing in the revision application and shall have to send the notices to the respective parties which will take long time. The matter shall be disposed of by the Tribunal as per its day to day Board, but the old revision application may be given priority in the hearing. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-